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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,787	03/12/2004	Douglas Ellis	27939/04040	8318
24024	7590	10/04/2005		
CALFEE HALTER & GRISWOLD, LLP 800 SUPERIOR AVENUE SUITE 1400 CLEVELAND, OH 44114			EXAMINER GEHMAN, BRYON P	
			ART UNIT 3728	PAPER NUMBER

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/799,787	Applicant(s) ELLIS ET AL.	
	Examiner Bryon P. Gehman	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/12/04</u> . | 6) <input type="checkbox"/> Other: _____ |

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1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 5-7, 9-21 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 5, the recitation is redundant in view of claim 1, line 8.

In claims 6 and 7, line 2 of each, "said inward pushing force" lacks antecedent basis.

In claim 9, line 2, "the original seal" lacks antecedent basis. The closure and imaginary container are never actually combined, much less any seal being distinguished. See also claim 10, line 3, claim 11, lines 8-9 and 11, claim 12, line 3 and claim 15, lines 2 and 5.

In claims 9 and 10, lines 2 and 3, respectively, "said container" lacks antecedent basis, as claim 1 never defines a container per se. The phrase "closure for a container" defines a closure of a capability relative to a container but no container per se. The phrase "plug adapted to be fixed to the container" defines a plug of a capability relative to a container but no container per se. Accordingly, claims 1-10 define a closure alone.

In claim 11, lines 14-15, there is insufficient recitation to provide for "said tamper-evident member detaches from said slide". Similarly, in claim 16, there is insufficient structure recited for "said detachable member remains spaced apart from said slide...".

In claim 15, lines 3-4, "said detachable member detaching from said slide and moving with said slide" is contradictory, as detaching indicates separation that does not occur if the elements move together.

In claim 17, line 6, "said address label" lacks antecedent basis, as "surface large enough for placement of a mailing address label" defines a surface of a capability, but no label per se.

In claim 20, line 2, "a push-to-slide configuration" is indefinite.

In claim 21, line 2, "the original seal" lacks antecedent basis, as no seal is distinguished. See also claim 25.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-8 and 22-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Rosten et al. (4,819,829). Claims 1-3, 5-6, 9, 11, 15 and 22-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Waterbury (4,170,724). Each discloses a child-resistant (as much as structurally distinguished) closure comprising a plug (10 or 70; 11; respectively) having an access opening (30 or 82; 17), and a slide (38 or 78; 13) supported on the plug for sliding movement, and a child-resistant feature (44, 46; 20 or 21) interposed between the plug and the slide. Waterbury further discloses a tamper-

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evident member (seal 20 or frangible seal 21) that serves as a child-resistant feature, the slide and tamper-evident member remaining connected after the tamper-evident member detaches from the slide.

As to claim 2, each discloses a slide that can be positioned variably along its sliding path.

As to claim 3, the frictional engagement between the slide and the plug serves as a retainer.

As to claim 4, Rosten et al. disclose the retainer including ratchet teeth (44 or ends of each element 44) that engage the slide.

As to claim 6, each discloses blocking portions (44, 46; the seal 20 or sealed portions between 21 and 11) released due to an inward pushing force.

As to claim 7, deformation occurs to release element 44 from element 46 in Rosten et al..

As to claim 8, the interaction occurs to release element 44 from element 46 in Rosten et al. will provide an inherent clicking noise.

As to claim 23, each discloses the slide being pushed down into the plug when assembled.

5. Claims 17-21 are rejected under 35 U.S.C. 102(b) as being anticipated by McKee (4,860,899). McKee discloses a package comprising a medicine container (24) having a generally rectangular configuration including at least one side surface (top, bottom)

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capable of receiving a label, and a sealable envelope through which the imaginary label would be visible.

As to claim 18, the top and bottom surfaces are flat.

As to claim 19, spine surfaces extend between the opposed top and bottom surfaces.

As to claim 20, the container closure is child-resistant, and will allow the container to be pushed to slide, as much as distinguished.

As to claim 21, the closure needs to be detached so as to be opened.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 10-12 and 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waterbury. Waterbury has been explained above. The seal 21 is either totally moved by movement of the slide or torn by movement of the slide. For a user to completely remove the seal after breaking would have been an obvious in order to provide the access opening with an entirely unobstructed area.

As to claim 12, the functional recitation would occur upon manual removal of the seal remains, as explained above.

As to claim 15, should the detachable seal 21 be torn, both detaching and moving of the detachable member 21 would occur of the remaining elements.

8. Claims 9-16 and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosten et al. in view of Waterbury. To modify the structure of Rosten et al. employing a tamper-evident member as disclosed by Waterbury would have been obvious in order to indicate tampering, as suggested by Waterbury. The seal 21 of Waterbury is either totally moved by movement of the slide or torn by movement of the slide. For a user to completely remove the seal after breaking would have been an obvious in order to provide the access opening with an entirely unobstructed area.

As to claims 12 and 16, the functional recitation would occur upon manual removal of the seal remains, as explained above.

As to claims 13 and 14, Rosten et al. disclose the retainer including ratchet teeth (44 or ends of each element 44) that engage the slide, the interaction occurs to release element 44 from element 46 in Rosten et al. will provide an inherent clicking noise.

As to claim 15, should the detachable seal 21 be torn, both detaching and moving of the detachable member 21 would occur of the remaining elements.

9. Claims 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over McKee (4,860,899) in view of Lurssen (2,115,494). McKee discloses a package comprising a medicine container (24) having a generally rectangular configuration including at least one side surface (top and bottom) capable of receiving a label, and a

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sealable envelope. Lurssen discloses providing a medicine container (21) provided with a mailing address label (see Figure 2) within a mailable structure. To modify McKee by providing a mailing label on the medicine container would have been obvious in order to render the package mailable, as suggested by Lurssen.

As to claim 18, the top and bottom surfaces are flat.

As to claim 19, spine surfaces extend between the opposed top and bottom surfaces.

As to claim 20, the container closure is child-resistant, and will allow the container to be pushed to slide, as much as distinguished.

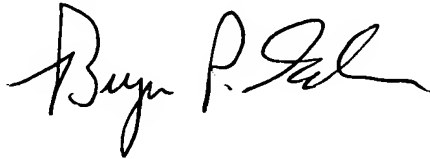
As to claim 21, the closure needs to be detached so as to be opened.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown are sliding closure containers and medicine containers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571) 272-4555. The examiner can normally be reached on Monday through Wednesday from 5:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Bryon P. Gehman". The signature is fluid and cursive, with the first name "Bryon" being more prominent than the last name "Gehman".

Bryon P. Gehman
Primary Examiner
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BPG